

**United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
<b>CASE NUMBER</b>	03 C 2582	<b>DATE</b>	4/24/2003
<b>CASE TITLE</b>	Tony Silva vs. United States		

**MOTION:** [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

10. The following table summarizes the results of the study.

**DOCKET ENTRY:**

- (1)  Filed motion of [ use listing in "Motion" box above.]

(2)  Brief in support of motion due \_\_\_\_\_.

(3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.

(4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.

(8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.

(9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)    Local Rule 41.1    FRCP41(a)(1)    FRCP41(a)(2).

(10)  [Other docket entry] Enter Memorandum Order. Both Silva's Complaint and this action are dismissed for lack of subject matter jurisdiction. That being the case, he has managed to save the \$150 filing fee, and it will not be necessary for him to cure the other defects identified at the outset of this memorandum order.

(11)  [For further detail see order attached to the original minute order.]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

TONY SILVA, )  
                  )  
                  )  
Plaintiff,     )  
                  )  
                  )  
v.               )     No. 03 C 2582  
                  )  
                  )  
UNITED STATES, )  
                  )  
                  )  
Defendant.     )

*DOCKETED*  
APR 25 2003

MEMORANDUM ORDER

Tony Silva ("Silva") has mailed to this District Court's Clerk's Office the signed original of a Complaint against the United States, seeking a trial by jury (which under law is unavailable against the United States as sovereign) and a judgment for \$950,000 in compensatory damages. Although Silva's submission has several other defects--his failure to pay the \$150 filing fee, his failure to tender enough counterparts to provide for service of process together with copies of the Complaint itself and his inadvertent omission of page 6 of the Complaint--another flaw that is fatal to Silva's action requires this Court to dismiss both the Complaint and this action for lack of subject matter jurisdiction.

As the Complaint reflects, Silva has previously been unsuccessful in attempting to proceed before the United States Court of Federal Claims--that Court's dismissal for lack of jurisdiction of the complaint that he had tendered there was affirmed by the Court of Appeals for the Federal Circuit last

*DOCKETED*  
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October (No. 02-5080, 51 Fed. Appx. 12, 2002 WL 31260448 (Fed. Cir. Oct. 9)). At the end of the Federal Circuit's per curiam opinion, Silva was told:

The proper forum for the requested relief, if available, is the district courts.

But Silva has not heeded the critical "if available" portion of that message. As the attached photocopy of the first page of his current Complaint reflects, he seeks to advance a tort claim under 28 U.S.C. §§1334(b) and 2680(h).<sup>1</sup> But the Federal Tort Claims Act, of which Section 2680 is a part, establishes as an essential precondition to bringing any lawsuit based on the asserted misconduct of federal employees the need to have presented that claim to the appropriate federal agency and to have had the claim either denied or not acted upon within a specified period (see Section 2675). Because Silva has failed to comply with that precondition to suit, this Court lacks jurisdiction.<sup>2</sup>

Accordingly both Silva's Complaint and this action are dismissed for lack of subject matter jurisdiction. That being the case, he has managed to save the \$150 filing fee, and it will

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<sup>1</sup> All further references to Title 28's provisions will simply take the form "Section--."

<sup>2</sup> Because this memorandum order addresses only the subject of jurisdiction, nothing is said or implied here as to whether Silva's administrative claim or any ensuing lawsuit would be timely.

not be necessary for him to cure the other defects identified at the outset of this memorandum order.

  
Milton I. Shadur  
Milton I. Shadur  
Senior United States District Judge

Date: April 24, 2003

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

Tony Silva,  
Plaintiff

v.

United States,  
Defendant

03C 2582

Tort Claim under 28  
U.S.C. Section 1346(b)  
and 2680(h)

JUDGE SHADUR

New Case No.

MAGISTRATE JUDGE NOLAN

Tort Claim under 28 U.S.C. § 1346(b) and 28 U.S.C. §  
2680(h)

JURISDICTION

The jurisdiction of this Court arises from title 28  
U.S.C. Sections 1346(b) and 2680(h) because the subject of  
this instant case deals with activities such as the abuse  
of process related to the illegal distribution of  
Plaintiff's property by the Defendant's employees in their  
official capacity.

APR 17 2003

JURY DEMAND

The Plaintiff will request a trial by jury.

STATEMENT OF THE FACTS/CASE

- 1) Starting in August 1989, Tony Silva, Plaintiff in  
the instant case, entered into a breeding loan